



## **Montana Fish, Wildlife & Parks**

### **MEMORANDUM**

To: WPIC CSKT Technical Working Group

From: Andy Brummond

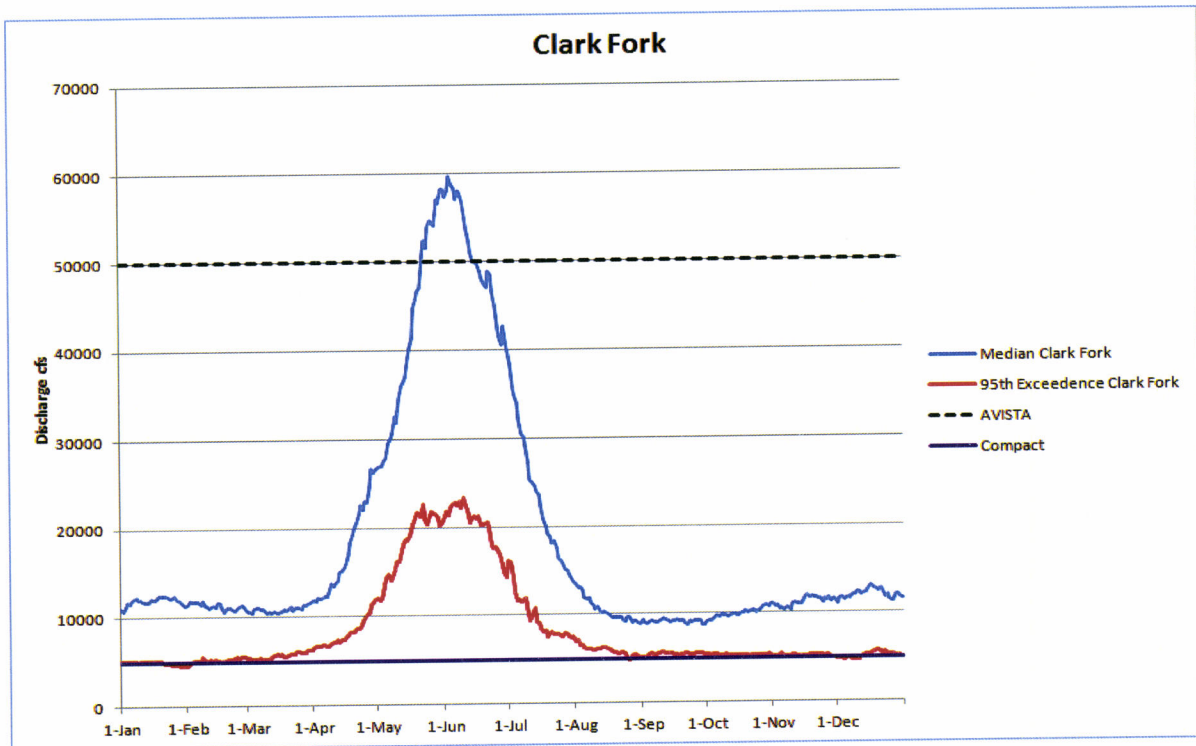
Date: July 1, 2014

Subject: Draft Changes in legal water demand due to CSKT Compact

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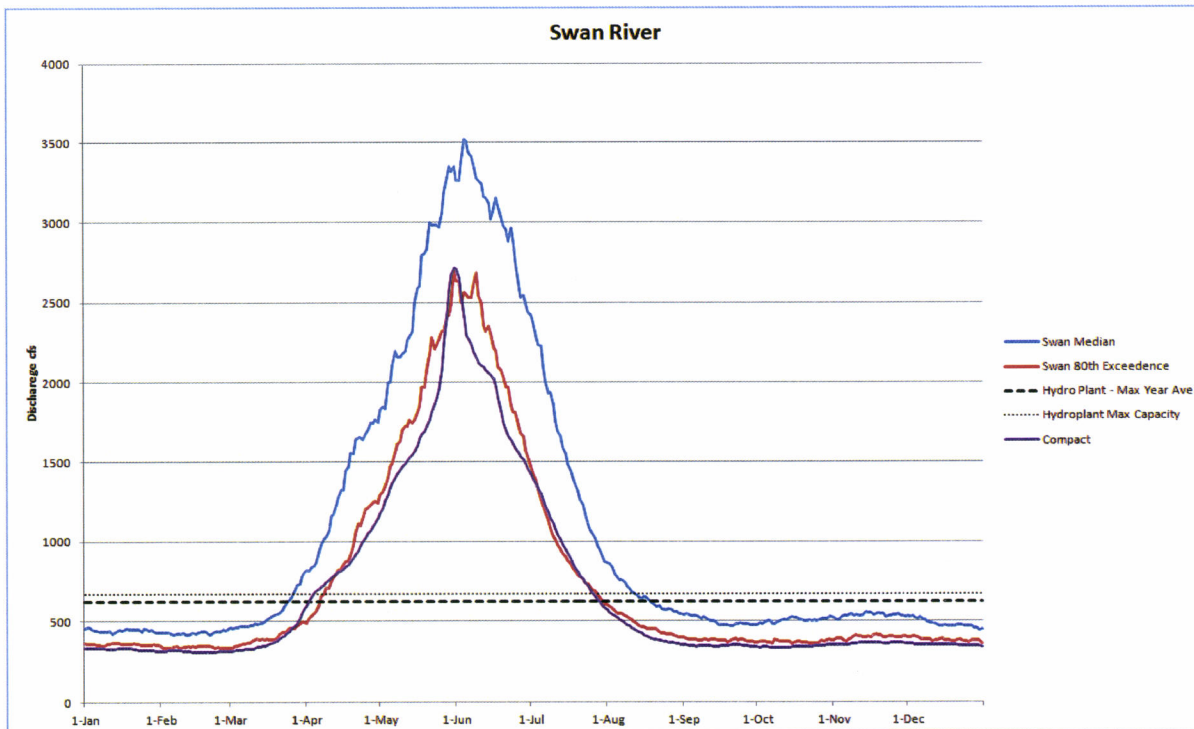
Question 2 posed by Representatives Ballance and Regier under the Water Use Agreement section of the Environmental Analysis portion of their April 28, 2014 discusses basin closures and the potential for call on existing water users. While the Compact does not include basin closures that further preclude the ability to apply for a new water right, changes in legal availability of water can potentially affect the ability to obtain a new water right. The question regarding the chances of existing water users being called is as much a socio-political question as a hydrologic or legal question. In other words just because the physical and legal circumstances that would allow for a call exist, does not mean that the senior water user will always make call.

Both the limiting impact on new water rights and the potential for call on existing water rights can be considered by examining the legal water demand that already exists and then determining how the proposed instream flow water rights outside of the Flathead Reservation would impact the legal availability of water. The following several charts explore this issue with respect to rivers where off-reservation instream flow water rights are proposed.

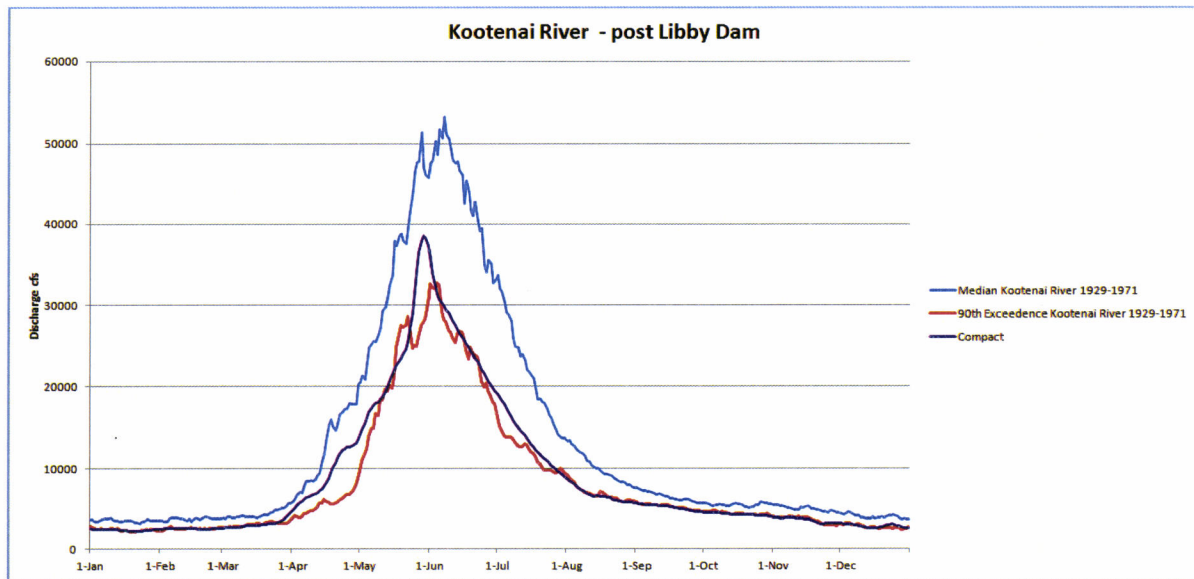


The 5000 cfs off-Reservation instream right for the lower Clark Fork does not impact potential legal water demand for water. The legal demand in the lower Clark Fork is dominated by AVISTA's existing water rights which total 50,000 cfs. The proposed CSKT right is not additive to the AVISTA rights, but runs concurrently. Presently there is a very narrow window in May and June when AVISTA's 50,000 cfs hydropower water rights at Noxon Rapids are fully satisfied. The proposed CSKT right would not narrow this window.

Only in about 1 out of 20 years on a statistical basis the Clark Fork drops to the 5000 cfs level during roughly September through mid-March. As this is outside the normal irrigation season, it is unlikely an irrigator would be called based on the 5000 cfs right.

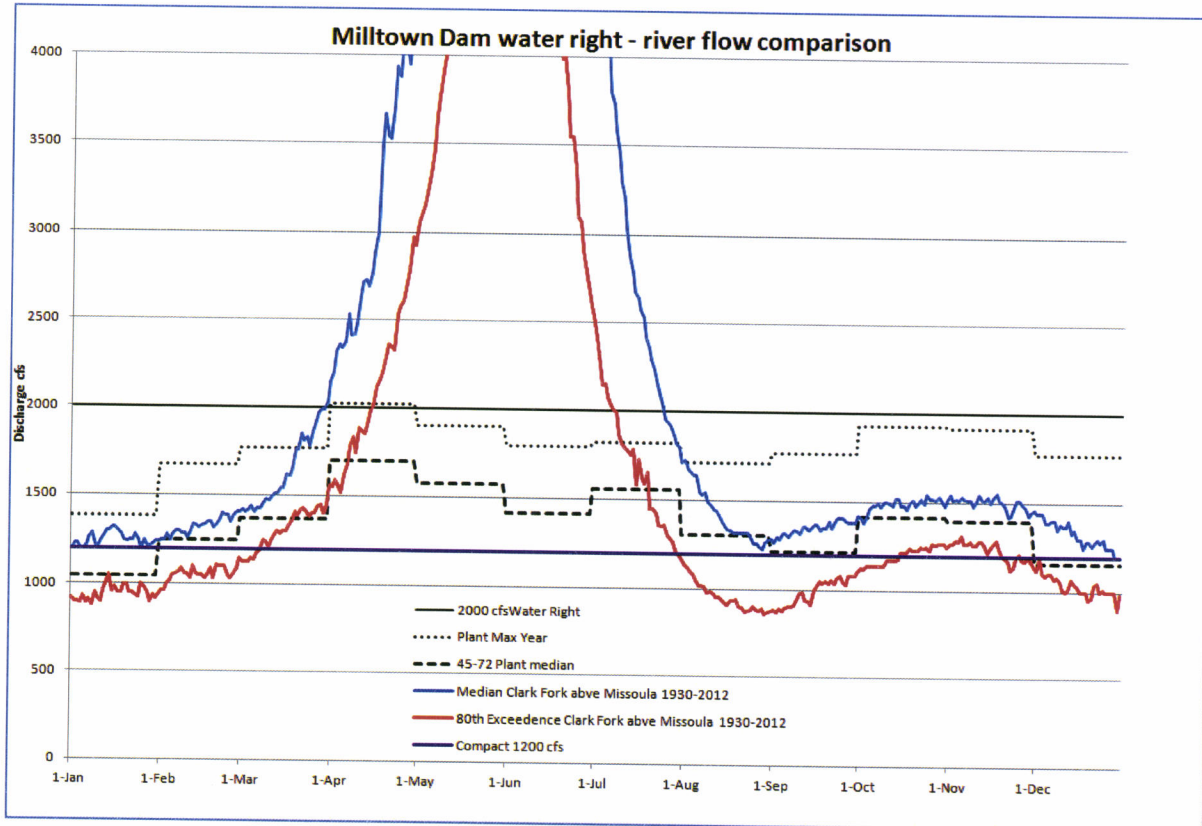


For the Swan River during approximately the April through August period the legal demand for water is increased by the proposed CSKT instream water right beyond current levels. During the remainder of the year stream flows normally do not exceed the existing water right demand of Pacificorp's Big Fork Hydropower Plant. Surface water and groundwater irrigators over 100 gpm may be subject to call more often. On a statistical basis this could occur in about 2 out of 10 years.



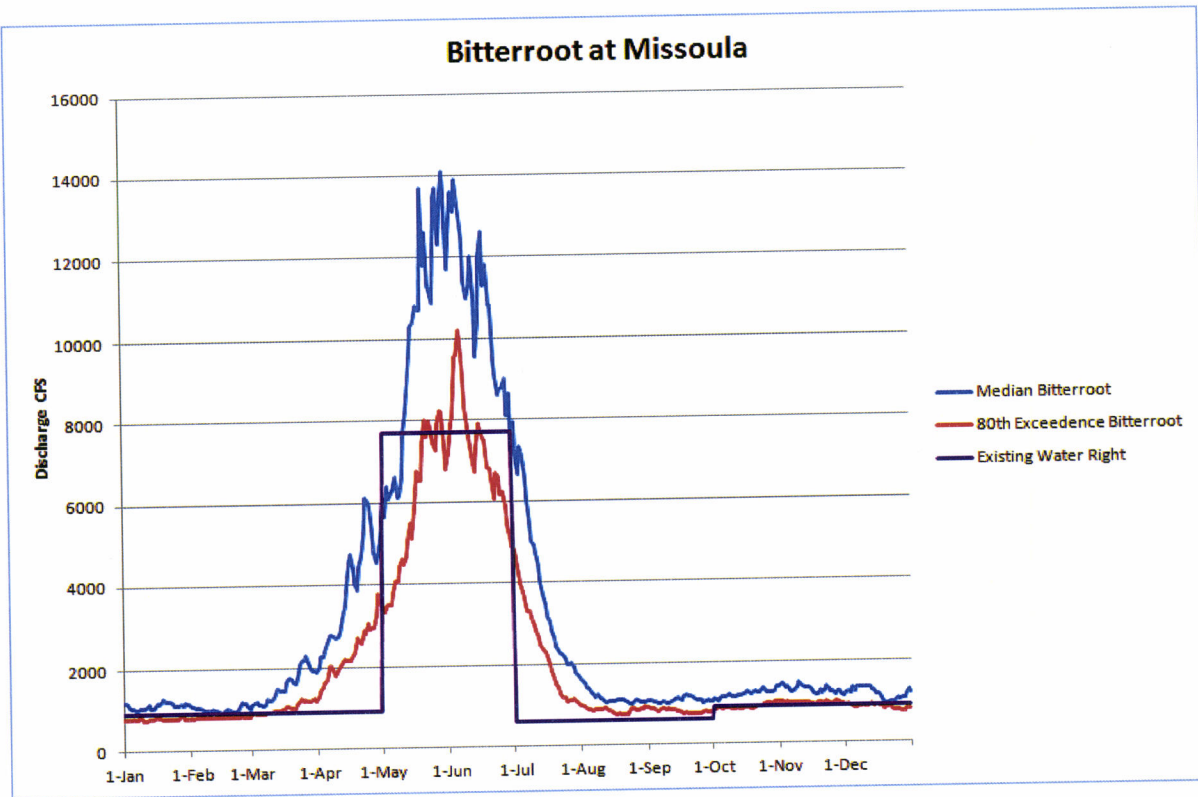
In the event that Libby Dam were removed at some point in the future, surface water and groundwater irrigators over 100 gpm may be subject to call in about 1 out of 10 years.





The proposed instream flow level for the Clark Fork River at Milltown is 1200 cfs, split 700 cfs / 500 cfs between the Blackfoot and Clark Fork Rivers. The existing hydropower right for the Milltown Dam is 2000 cfs, but the actual water usage and hence the extent of the water right may be somewhat less. The chart above shows in dashed lines the median of water run through the hydropower plant during the 1945-1972 period as well as the highest volume year during the same time period. It also shows the median and 80<sup>th</sup> exceedence hydrographs for the Clark Fork below Milltown.

If the Milltown Dam water right were changed to instream flow outside of the CSKT Compact a strong argument can be made that the demand for water, whether based on the median, highest year or some other hydrograph would exceed the demand of 1200 cfs proposed in the Compact. The CSKT Compact proposal for the Milltown Dam water right provides less likelihood that existing water users will be called.



The proposed CSKT off-Reservation instream flow rights for the Bitterroot River would be a co-ownership of existing FWP instream water rights. This does not impact potential legal water demand for Bitterroot River. These existing water rights can be the basis for a call in about 2 out of 10 years. These water rights are junior in priority to most water users in the basin and all of the large irrigation water rights from the Bitterroot River.

#### **Other off-reservation instream flow water rights**

Co-ownership with FWP of existing Murphy Rights on the forks and main stem Flathead River would not change the existing legal demand. The same is true for Murphy Rights on the Blackfoot River and Rock Creek as well as other public recreation water rights held by FWP in the Blackfoot basin.